



Welburn Hall School

The freedom of information act

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Review Date:

Status *Draft*

Responsibility: It is the responsibility of the Governors to ensure procedures are in place to ensure that the school handles information requests covered by the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR) in accordance with the provisions laid out therein and that the school satisfies the standards set out in the Lord Chancellor's Code of Practice on satisfying public authorities obligations under the FoIA, produced under section 45 of that Act.

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1 Introduction

Welburn Hall School is committed to transparency in its dealings with the public and fully embraces the aims of the Freedom of Information Act 2000 and the access provisions of the Data Protection Act 1998. The School will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.

The underlying principle of this policy is that the public have a right to access to recorded information held by the School and that the School should seek to promote an open regime regarding access to information, subject to the exemptions contained within the relevant legislation.

Separate guidance, in the form of operating procedures, has been given to staff in the staff handbook on how to handle information requests received under the FoIA regime

2 Background

The FoIA applies to all public authorities and came fully into force on 1st January 2005. It provides the public with a statutory right of access to recorded information held by authorities, subject to certain exemptions, within twenty working days. The Act is fully retrospective and applies to all information that falls within the scope of the Act, not just information created from 1st January 2005. Section 19 of the Act also obliges the School to make information proactively available in the form of an approved "publication scheme".

In addition, individuals currently have a statutory right of access to their own "personal data" under the DPA. Individual access rights to personal data are extended by the FoIA through amendments to the access provisions of the DPA.

The EIR provides a statutory right of access to "environmental information", as defined in these regulations. The EIR came into force on 1st January 2005 and replaces the existing 1992 Regulations. The EIR are also fully retrospective.

The Government's Information Commissioner enforces these three information regimes.

Each regime contains certain categories of exempt information, where information can be withheld. Any decision to withhold information under an exemption can be referred by the applicant to the Information Commissioner, who can overturn any decision to withhold information. For the purposes of this policy, the "public" is defined as any individual or organisation anywhere in the world and an "information request" refers to any request for recorded information made under the FoIA, EIR or DPA.

3 Timescales

Freedom of Information requests should be dealt with within 20 working days, excluding school holidays.

Requests for Data Protection (subject access requests) should be dealt with within 40 calendar days.

Requests for pupil education records should be dealt with within 15 school days.

4 Delegated responsibilities

Overall responsibility for ensuring that the School meets the statutory requirements of the FoIA, EIR and DPA lies with the Governors and the Chair of Governors has overall responsibility for information management issues. They have delegated the day-to-day responsibility of implementation to the Head teacher.

The Head teacher is assisted by the Office Manager who currently fulfils the role of 'Fol officer'. All School staff are responsible for ensuring that they handle requests for information in compliance with the provisions of the various Acts, taking advice from the Fol officer where necessary.

5 Scope

This policy applies to all recorded information held by the School that relates to the business of the School. This includes:

- Information created and held by the School
- Information created by the School and held by another organisation on our behalf
- Information held by the School provided by third parties, where this relates to a function or business of the School (such as contractual information) and
- Information held by the School relating to Governors where the information relates to the functions or business of the School

This policy does not cover personal written communications (such as personal e-mails sent by staff). The School's Data Protection Policy establishes the standards regarding the use of "personal data" (as defined in the DPA).

6 Requesting information

6.1 Procedures

Practical procedures for handling information enquiries in line with the relevant legislation will be produced and copies can be obtained from the School's Fol Officer.

The School has a duty under both the FoIA and EIR to provide advice and assistance to applicants making information requests. This includes assisting the applicant in making the application for information. Although no such duty exists under the DPA, the same level of care will be provided.

- 6.2** Where the School estimates that the cost of locating the information will exceed the statutory threshold of £450, it will consider whether or not to comply with the request. The School is not obliged to comply with such a request but may choose to do so.

The Data Protection Act 1998 permits a charge of up to £10 to be made for responding to requests for personal data. There is a sliding scale of up to £50 for copies of educational records.

- 6.3** Section 19 of the FoIA obliges the School to make information pro-actively available in the form of a “publication scheme”. This scheme will list categories, or “classes” of information that will routinely be made available without the need for a specific information request. The School will indicate in the scheme where it wishes to charge for providing particular categories of information. The scheme is published on the School’s website.

The School plans to review this scheme regularly. Whenever any information is provided in response to a recorded FoIA enquiry, the School will assess whether the information is suitable for wider publication. In general, there will be a presumption in favour of publishing such information on the School’s website.

7

Withholding Information

Where an absolute exemption applies, the School can automatically withhold the information. However, where the exemption is non-absolute the information can only be withheld where the School decides that the public interest is best served by withholding the information.

Certain exemptions also contain a “prejudice test”, which means that the exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption.

The School will also refuse to supply information under the FoIA, where the request is considered “vexatious” or “repeated” and under the EIR, where the request is considered ‘manifestly unreasonable’.

8

Releasing a third party’s information

As the DPA only relates to living individuals, the exemption relating to Data Protection under both the EIR and FoIA will not apply to information held about the deceased. Where the request might be controversial, the staff member will seek input from the FoI officer who will take advice from the Governing Body where necessary.

Where the third party is an organisation, rather than an individual, the provisions of DPA 1998 will not apply. The School will consider consulting the third party concerning the release of their information where:

- the views of the third party may assist the School to decide whether an exemption under the Act applies to the information and

- in the event of the public interest test being applied, where the views of the third party may assist the School to make a decision relating to where the public interest lies

Consultation will not be undertaken where:

- the School will not be disclosing the information due to some valid reason under the Act
- the School is satisfied that no exemption applies to the information and therefore cannot be withheld and
- the views of the third party will have no effect on the decision e.g. where there is other legislation preventing disclosure

Where input from a third party is required, the response time for the request remains the same. Therefore it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that where responses are not immediate, the decision to disclose may have to be made without their input in order for the School to comply with the statutory time limits dictated by the legislation.

The School will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information opportunity to request confidentiality or supply reasons as to why the information should be treated confidentially.

9

Information held within contracts with the School

The School can also withhold information contained in contracts where any of the other exemptions listed in the FoIA or EIR are appropriate, although information will only be withheld in line with the School's policy on the use of exemptions. All future contracts should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to a FoIA or EIR request.

10

Complaints procedure

Whenever the School withholds information under an exemption, or for any other reason, it will inform the applicant of their right to complain about the decision through the School's complaints procedure and of the right of appeal to the Information Commissioner.

Any complaint received will be dealt with in accordance with the School's complaints procedure as detailed in its Complaints Policy. If the result of the complaints is that any decision to withhold information be overturned, this information will be supplied as soon as it is possible.

11

Requests made under the Data Protection Act

The Data Protection Act 1998 entitles an individual to his or her 'personal data', as defined in that Act, where the information is held on an automated system, such as a computer and also manual files, where they amount to what the DPA describes as an "accessible record" or in a structured filing system, defined in the DPA as a "relevant filing system".

The parental right to receive information pertaining to the “educational record” of their child should continue to be administered under the Education (Pupil Information) (England) Regulations 2000. Whenever a request for personal data is received and is not covered by these regulations, the request will be administered in accordance with the relevant section of the School’s FoIA operating procedures.

Whenever a request is made under the DPA for personal data, the School will provide the applicant with the relevant information contained within files relating to that individual that is accessible under both the DPA and FoIA, subject to any exemptions.

Where it is not possible to remove third party information without rendering the response useless to the individual, the provision of third party information will be considered in line with section 7 of this policy regarding the disclosure of third party information.

The DPA contains the provision for numerous types of exemption. Therefore, whenever a member of staff is considering applying an exemption, he/she will seek the opinion of the FoI officer.

12 **Illegal actions**

It is a criminal offence under any of the three information regimes for members of staff to alter, deface or remove any record (including e-mails) following receipt of an information request. Both the FoIA and EIR contain specific provisions to make such action a criminal offence.

13 **Review of the Policy**

This policy is scheduled for review by Business Support Team.

Comments from staff, parents and members of the public on this policy and its implementation are welcome and can be addressed to:

The Business Support Team
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